

DOCKET NO.: ALLE0027-100 (17641)**PATENT****REMARKS**

Upon entry of this response, claims 1-4 and 14-16 will be pending in this application.

The Office Action maintains the requirement to elect a species because the Office allegedly found art that would render the use of the elected species (botulinum toxin type A) obvious. However, as presented below, Applicant has overcome the obviousness rejection. Accordingly, Applicant respectfully requests that the search be extended to include all seven species of botulinum toxin.

The specification has been amended to show the generic terminology following the trademarks BOTOX®, DYSPORT®, and MYOBLOC®. Further, the Examples in the specification have been amended to have the verbs in the present tense.

Applicant wishes to thank the Office for withdrawing the nonstatutory double patenting rejection, and the rejections under 35 U.S.C. § 112 and 102.

Claims 1-4 and 14-16 are newly rejected under 35 U.S.C. § 103 (a) as allegedly being obvious over US Patent No. 6,767,544 (hereafter "the 544 patent") in view of US Patent No. 5,376,376. Applicant respectfully submits that the 544 patent cannot be used as a prior art against the present application because (1) the present application was filed after November 29, 1999, (2) the 544 patent qualifies as a 102 (e) reference, and (3) the present application and the 544 patent were commonly owned by Allergan, Inc., when the invention of the present application was made. MPEP §706.02 (1)(2). The attached Declaration by the attorney of record, Mr. Stephen Donovan, provides a statement that the present application and the 544 patent were owned by Allergan, Inc., at the time the invention of the present application was made. Thus, Applicant respectfully requests a withdrawal of the rejection made under 35 U.S.C. § 103 (a) that is based on the 544 patent.

DOCKET NO.: ALLE0027-100 (17641)

PATENT

In view of the foregoing, Applicant submits that the pending claims are in condition for allowance, and an early Office Action to that effect is earnestly solicited.

Respectfully submitted,



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